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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,028	07/25/2001	Hassan K. Sreenath	096429-9108	7045

23510 7590 07/28/2003

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EXAMINER

PRATS, FRANCISCO CHANDLER

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 07/28/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/915,028

Applicant(s)

SREENATH, HASSAN K.

Examiner

Francisco C Prats

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 July 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-5.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Francisco C Prats  
Primary Examiner  
Art Unit: 1651

**ATTACHMENT TO ADVISORY ACTION**

The response filed July 14, 2003 (certificate of mailing of July 7, 2003), has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior office action.

All of applicant's argument submitted to date has been considered and reconsidered. It is noted that the interview summary record of June 5, 2003, states that potential strategies for demonstrating unexpected results due to simultaneous saccharification and fermentation were discussed. However, as applicant is aware, proposed new limitations are not entered as a matter of right after a final rejection issues. Applicant was aware that the new "simultaneous" limitation could be denied entry if it raised a new issue for search and/or consideration.

Also, it was not clear that at the time of the interview that applicant would attempt to make of record a piece of prior art which suggested the obviousness of the proposed new "simultaneous" limitation alleged by applicant to confer an unexpected result on the claimed process. The Venkatesh reference, referred to in the response of July 14, 2003, and filed at the same time as the after-final submission proposing the new "simultaneous" limitation, underscores the fact that the proposed new "simultaneous" limitation clearly requires

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additional search and consideration beyond that performed before the final rejection. Denial of entry of the proposed new "simultaneous" limitation was therefore clearly proper at this stage of prosecution.

Lastly, it is noted that applicant continues to urge that it is unexpected to conduct simultaneous saccharification and fermentation according to the claims in the presence of chemicals used in the sausage industry to inhibit bacterial growth. However, the fact still remains that applicant has not supported this assertion with any evidence. For example, applicant has not submitted a prior art reference which demonstrates that lactobacilli would not be expected to grow or function in an aqueous milieu containing the chemicals which would be present in a spent sausage casing. In this regard note specifically that argument by counsel is not a sufficient substitute for actual evidence. See, e.g., MPEP § 2145, subsection "I", and cases cited therein. In the absence of actual evidence of unexpected results, the holding of prima facie obviousness is properly maintained. On the current record allowance of the pending claims clearly would not be proper.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francisco

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C Prats whose telephone number is 703-308-3665. The examiner can normally be reached on Monday through Friday, with alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Wityshyn can be reached on 703-308-4743. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Francisco C Prats  
Primary Examiner  
Art Unit 1651

FCP  
July 25, 2003